S.B. Civil Writ Petition NO.2124/2004
(Baldev Ram & Ors. Vs. Khinv Raj)

Date of order : 21.5.2007

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. J.R. Beniwal, for the petitioners.
Mr. Jitendra Chopra, for the respondent.

By way of filing the present writ petition, the petitioners have challenged the order dated 12.2.2001 passed by Additional Civil Judge (J.D.) & Judicial Magistrate No.1, Jodhpur on application filed by the petitioners under Order 13 Rule 2 read with Section 151 C.P.C. whereby the petitioners prayed for taking on record two judgments dated 15.6.1998 and 25.4.2000 passed by Revenue Appellate Authority, Jodhpur.

In this case, earlier, a revision petition was preferred by the petitioners being SB Civil Revision Petition No.363/2001 against the impugned order dated 12.2.2001, which was dismissed by this Court on 6.10.2003 in view of the judgment rendered by Hon'ble Supreme Court in case of Surya Dev Rai Vs. Ram Chandra Rai & Ors., reported in 2003 (6) SCC, 675. In the said judgment, the Hon'ble Apex Court held that revision against an interlocutory order is not permissible to be revised under Section 115 C.P.C.. However, a liberty was granted to the petitioners to

seek other remedies, available to the petitioners. Thereafter, the petitioners preferred the present writ petition before this Court.

During pendency of the writ petition, suit filed by the non-petitioner was decreed ex-parte vide order dated 15.4.2005. However, later on upon application filed under Order 9 Rule 13 read with Section 151 of C.P.C., the suit was restored vide order dated 3.5.2007 and at present, the suit is pending in the Court of Additional Civil Judge (J.D.) & Judicial Magistrate No.5, Jodhpur.

According to the facts of the present writ petition, the plaintiff-non-petitioner filed a suit for injunction against the defendant-petitioners in the year 1986. Later on, an application was filed for amendment of the suit for possession and injunction. The written statement was filed in the suit and during the pendency of the suit, other parallel proceedings with regard to 'patta' issued in favour of the petitioners were initiated by the plaintiff-respondent before the Revenue Court. The non-petitioner-plaintiff filed an appeal before the Revenue Appellate Authority against the order of conversion of land in dispute dated 16.12.1989, passed in favour of petitioner-defendant and the said appeal was decided by Revenue Appellate Authority, Jodhpur vide judgment dated 15.6.1998 in favour of petitioners. Similarly,

a review petition was filed against the order dated 15.6.1998, which was also dismissed on 25.4.2000. After decision by the Revenue Appellate Authority, the petitioners moved an application for taking those judgments on record. However, the learned trial court vide impugned order dated 12.1.2001 dismissed the application while observing that those judgments are not necessary for adjudication of the matter because by those judgments, new facts will come on record and for the same, no issues have been framed. Therefore, there is no need to take those judgments on record.

Learned counsel for the petitioners has prayed that the order impugned passed by learned trial court is totally illegal. The matter has been decided by the Revenue Appellate Authority after hearing both the parties and those judgments are related to the ownership of the property and if such judgments are not taken on record, then, it will adversely affect the rights of the parties and, therefore, taking into consideration the principles of natural justice and the controversy involved, those judgments may be ordered to be taken on record.

It is submitted by the learned counsel for the respondent that the application under Order 13 Rule 2 CPC has been filed on 23.11.2000 for taking on record two judgments, therefore, after such a long delay, such documents cannot be taken on record.

Similarly, those documents have been filed after recording evidence of plaintiff, thus, if those documents are taken on record at this stage, then, the respondents will loose their right of rebuttal. Therefore, there is no question of taking on record those judgments.

I have heard learned counsel for the parties and perused the record of the case as well as both the judgments dated 15.6.1998 and 25.4.2000 passed by Revenue Appellate Authority, Jodhpur.

It is not disputed before the Court that those judgments, which the petitioners want to take on record are related to the same property, which is subject matter of the suit. So also, the respondent was party before the Revenue Appellate Authority and the proceedings were initiated in the revenue court at the instance of the respondent himself with regard to the validity of 'patta' of the plaintiffs for the same land upon which the respondent is claiming his possession. Therefore, in my opinion, those judgments are required to be taken on record for the just decision of the case and the trial court has committed an error while not taking those documents on record.

Accordingly, the impugned order dated 12.2.2001 passed by Additional Civil Judge (JD) & Judicial Magistrate No.1, Jodhpur is set aside. The

trial court is directed to take on record both the judgments dated 15.6.1998 and 25.4.2000 passed by Revenue Appellate Authority, Jodhpur at the cost of Rs.1,000/-, which shall be paid to the respondent. However, the respondent will be at liberty to take all his objections, if any, in rebuttal in the proceedings before the trial court.

The petition stands allowed.

(GOPAL KRISHAN VYAS), J .

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